

***Interim Charge #1***

***SB 1264, which prohibits balance billing (surprise billing) and creates an arbitration system to settle balance bills. Monitor the implementation of the mediation and arbitration programs, including the establishment of a portal on the TDI website through which requests for mediation and arbitration may be submitted. Determine whether the appropriate state agencies are enforcing the prohibition on balance billing. Review the Department's rules implementing the legislation's exception for non-emergency "elective" services to determine whether the rules limit the exception to out-of-network services that a patient has actively elected after receiving a complete written disclosure. Monitor or follow up on TDI's process for selecting the benchmarking database and determine whether the database chosen provides the most accurate available data and its sources are transparent. Evaluate the fiscal impact of the legislation on the Employees Retirement System of Texas and the Teacher Retirement System of Texas. Review costs to the systems and savings to employees and teachers.***

September 8, 2020

Chair Lucio and members of the House Committee on Insurance:

Thank you for the opportunity to share the fiscal impact of SB 1264 to the health plans of the Employees Retirement System of Texas (ERS). ERS administers health insurance benefits for more than a half million state and certain higher education employees, retirees and dependents through the Texas Employees Group Benefits Program (GBP). Approximately 80% of GBP health plan participants are enrolled in HealthSelect of Texas, a self-funded, point of service health benefit plan. The remaining 20% of ERS members are covered by regional HMO and Medicare Advantage plans. The data reported today will reflect the impact to the HealthSelect of Texas plan.

HealthSelect of Texas benefits include medical and prescription drug services. Blue Cross and Blue Shield of Texas (BCBSTX) is the current HealthSelect of Texas third-party administrator for medical services. During the first half of Plan Year 2020 (9/1/19 – 2/29/2020), while the combined medical and pharmacy plan trend was slightly lower than the original projected trend, it was well within the normal year-to-year variance range. Beginning in March 2020; however, with the impact of the COVID-19 pandemic, medical utilization dropped sharply and lower medical utilization is expected to continue through the remainder of the year. With lower plan utilization, fewer services were impacted by the policies in SB 1264. It is unknown whether the pandemic affected a provider's ability and/or desire to make use of the arbitration process.

As of July 31, 2020, HealthSelect of Texas received 1192 arbitration requests.

- 494 are listed as complete resulting in a total of \$256,859 in additional payments to providers.
  - 488 arbitrations, 297 in favor of the provider
  - 6 successful negotiations
- 267 are listed as open<sup>1</sup> resulting in a total of \$141,359 in additional payments to providers
  - 125 arbitrations, 73 in favor of the provider
  - 142 successful negotiations
- 431 are listed as outstanding with no listed resolution
  - The difference between the billed and allowed amount for these outstanding claims is \$930,646.

Of the 1,192 requested arbitrations, the vast majority (1,175) are from ER physicians, the other 17 are from anesthesiologists, nurse anesthetists, surgical assistants, and surgeons.

With SB 1264 preventing emergency room providers from balance billing patients, ERS identified an opportunity to modify its reimbursement strategy for out-of-network emergency room (ER) services as a cost savings initiative. Effective January 1, 2020, rather than reimbursing at billed charges for out-of-network ER services, ERS began reimbursing based on the BCBSTX PPO network rate in the applicable region. While this is a slightly higher reimbursement than HealthSelect of Texas network rates, it is less than billed charges.

At this time, the plan savings attributed to the modified ER physician reimbursement policy are greater than the additional costs to the plan due to arbitration results. Should the use of arbitration increase by non-ER physicians, there could be a negative impact on plan costs and network. Additionally, plan cost impact has been less than anticipated due to the smaller number of received arbitration requests.

As you are aware, this is still a new process and providers are dealing with a drastically changed world and health care system in 2020. Therefore, experience could change as providers familiarize themselves with the arbitration system and as health care trends return to normal, pre-pandemic levels. ERS will continue to monitor and provide updates should the experience change.

As always, we are here as a resource and look forward to working together to best manage the health plans for your state employees.

Respectfully submitted,  
Porter Wilson  
Executive Director  
Employees Retirement System of Texas

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<sup>i</sup> The “open” designates that the full financial process following the arbitrator decision has not been completed.